

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

RECEIVED

NOV 12 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

BEEHIVE TELEPHONE COMPANY, INC.
BEEHIVE TELEPHONE, INC. NEVADA

Tariff F.C.C. No. 1

To: The Commission

CC Docket No. 98-108

Transmittal No. 11

MOTION TO CONSOLIDATE

Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively "Beehive"), by their attorneys, and pursuant to section 1.41 of the Commission's Rules, hereby requests the Commission to act on their Application for Review ("Application"), filed in the above-captioned proceeding on July 30, 1998, when it issues its order concluding its investigation of Beehive's Transmittal No. 11. In support thereof, the following is respectfully submitted.

Consolidation of actions is appropriate when they involve "common questions of law or fact." *Metacomm Cellular Partners*, 13 FCC Rcd 12192, 12195 (Wire. Tele. Bur. 1998) (quoting Fed. R. Civ. P. 42(a)). See *ATU-Long Distance, Inc. v. Alascom, Inc.*, 12 FCC Rcd 20200, 20201 (Com. Car. Bur. 1997). Matters also are consolidated that involve the same parties and "relate substantially to the same questions and subject matter." *TRAC Communications, Inc. v. Detroit Cellular Tel. Co.*, 3 FCC Rcd 4864, 4864 (Com. Car. Bur. 1988). The Application and the investigation of Beehive's Transmittal No. 11 should be consolidated under those standards.

By its Application, Beehive seeks review of the action of the Common Carrier Bureau ("Bureau") summarily rejecting the revisions to Beehive's premium and non-premium local switching rate elements filed with its Transmittal No. 11. See *Beehive Tel. Co., Inc.*, 13 FCC Rcd 12647,

No. of Copies rec'd 217
List A B C D E

12650-51 (Com. Car. Bur. 1998). Therefore, the Application and the Transmittal No. 11 investigation involve the same party (Beehive) and subject matter (Beehive's Transmittal No. 11).

At issue in both matters is the question of the lawfulness of the revised rates proposed by Beehive in its Transmittal No. 11. The Application presents the issue of whether Beehive's proposed local switching rates were "patently unlawful" on their face, *Beehive Tel.*, 13 FCC Rcd at 12649, and therefore subject to summary rejection. *See, e.g., American Broadcasting Cos. v. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980). The tariff investigation is to determine whether Beehive's proposed rates for its three remaining elements are cost-justified and, therefore, "just and reasonable" under 47 U.S.C. § 201(b). Because the lawfulness of the rates proposed in Transmittal No. 11 are at issue in both matters, they should be consolidated in the interests of avoiding inconsistent decision-making.

To be just and reasonable, Beehive's access rates should be based on the same interstate revenue requirement. Therefore, if Beehive carries its burden in the tariff investigation of demonstrating that its proposed rates were cost-justified and properly developed, then the Commission should review and rescind the Bureau's rejection of Beehive's local switching rates. It would be unreasonable to have Beehive's local switching rates be based on the "average total plant in service and net investment of similar companies," *Beehive Tel.*, 13 FCC Rcd at 12648, while Beehive's tandem switched transport facility, tandem switched transport termination, and transport interconnection charge rates are based in its actual 1996/1997 costs.

Conversely, if Beehive fails to carry its burden of proof, the Bureau's action may have to be rescinded depending on the rate prescription methodology employed by the Commission. For example, some of Beehive's rates cannot be based on a revenue requirement calculated using an


average total plant in service and net investment of a sample of comparable companies in 1995 or 1996, *see Beehive Tel. Co., Inc.*, 13 FCC Rcd 12275, 12285-86, *reconsideration denied*, FCC 98-241, 1998 WL 64414 (Sept. 28, 1998), *petition for review filed, Beehive Tel. Co., Inc. v. FCC*, No. 98-1467 (D.C. Cir. Oct. 6, 1998), when Beehive's rates are supposed to be based on its total 1996/1997 cost of service and related demand. *See* 47 C.F.R. § 61.39(b)(1)(ii).

Consolidated disposition of the Application and the Transmittal No. 11 investigation would "promote administrative efficiency." *TRAC*, 3 FCC Rcd at 4864. Action on the Application after issuance of the order concluding the investigation would inevitably lead to a duplication of effort or a bifurcated appeal process. It seems clear that efficiency would be served best by the simultaneous disposition of all issues raised with respect to Beehive's Transmittal No. 11.

For all the foregoing reasons, Beehive respectfully requests that the Commission consolidate its disposition of the Application with its action concluding its investigation of Transmittal No. 11.

Respectfully submitted,

BEEHIVE TELEPHONE COMPANY, INC.
BEEHIVE TELEPHONE, INC. NEVADA

By 

Russell D. Lukas
Their Attorney

Lukas, Nace, Gutierrez
& Sachs, Chartered
1111 19th Street, N. W., Twelfth Floor
Washington, D. C. 20036
(202) 857-3500

CERTIFICATE OF SERVICE


I, Paula L. Rogers, a secretary in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 12th day of November, 1998, had a copy of the foregoing MOTION TO CONSOLIDATE hand-delivered to the following:

Jane E. Jackson, Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Jon Stover, Esquire
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N. W., Room 528C
Washington, D. C. 20554

*Mark C. Rosenblum, Esquire
Peter H. Jacoby, Esquire
Seth S. Gross, Esquire
AT&T Corp.
295 North Maple Avenue, Room 3252F3
Basking Ridge, New Jersey 07920

International Transcription Service
1231 20th Street, N. W.
Washington, D. C. 20036



Paula L. Rogers

*via facsimile and U.S. Mail